

DOCKET FILE COPY ORIGINAL

ORIGINAL

Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554

RECEIVED

AUG 12 1997

FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

In the Matter of

Rules and Policies on Foreign  
Participation in the U.S.  
Telecommunications Market

)  
)  
) IB Docket No. 97-142  
)  
)  
)

Reply Comments of SITA

Albert Halprin  
Randall Cook  
Halprin, Temple, Goodman & Sugrue  
Suite 650 East Tower  
1100 New York Avenue, N.W.  
Washington, D.C. 20005  
(202) 371-9100

Counsel for Société Internationale de  
Télécommunications Aéronautiques

Dated: August 12, 1997

No. of Copies rec'd 0+4  
List ABCDE

Before the  
**FEDERAL COMMUNICATIONS COMMISSION**  
Washington, D.C. 20554

In the Matter of	)	
	)	
	)	IB Docket No. 97-142
Rules and Policies on Foreign	)	
Participation in the U.S.	)	
Telecommunications Market	)	

Reply Comments of SITA

SITA (Société Internationale de Télécommunications Aéronautiques) takes this opportunity to file reply comments in this proceeding being conducted in order to implement the United States' commitments in the World Trade Organization ("WTO") Basic Telecommunications Agreement. SITA requested in its comments that the Federal Communications Commission ("FCC") conclude that (1) the United States' WTO commitments include aeronautical enroute licenses among the basic telecommunications services to which indirect foreign ownership restrictions no longer apply; and (2) its current rule limiting aeronautical enroute licenses to "one station licensee per location," which has created a monopoly in aeronautical enroute services, is inconsistent with the United States' WTO commitments and is an unwarranted barrier to competition that should be removed. No sufficient reason has been offered why these steps should not be taken immediately.

The only other party that has explicitly addressed the treatment of aeronautical enroute services in this proceeding is Aeronautical Radio, Inc. ("ARINC"). ARINC has

asked the Commission to continue using an *ad hoc* approach to licensing aeronautical enroute services that it used prior to the Basic Telecommunications Agreement, rather than treating aeronautical enroute services the same as other basic services by permitting 100 percent indirect foreign investment as required by the Agreement. In its page and a half of comments, ARINC does not provide any support or analysis for its position. ARINC merely cites to the 1995 *Foreign Carrier Entry Order* in which the FCC noted that "[a]eronautical services play a critical role in aviation safety and their proper use in supporting air navigation is vital to national security."<sup>1/</sup> The Commission declined to allow foreign ownership above 25 percent in that previous proceeding because it was "unwilling to establish a rule where we have no historical guidance."<sup>2/</sup> ARINC, however, does not offer any additional analysis why the United States should ignore its WTO obligations and sound policy by continuing restrictions on indirect foreign ownership and maintaining the Commission's "one station licensee per location" rule, which protects ARINC's monopoly in aeronautical enroute services.<sup>3/</sup>

---

<sup>1/</sup> *Market Entry and Regulation of Foreign-Affiliated Entities*, Report and Order, 11 FCC Rcd. 3873, para. 196 (1995) ("*Foreign Carrier Entry Order*").

<sup>2/</sup> *Id.*

<sup>3/</sup> Given ARINC's paucity of arguments in the first round of comments, SITA recognizes that ARINC may file more extensive reply comments in response to SITA's comments. This would leave SITA without an opportunity in the written comment cycle for this proceeding to respond to additional arguments in ARINC's reply. As a result, SITA would like to note its interest in having an opportunity to provide additional information to address any arguments that ARINC may raise in its reply.

I. Public Safety and National Security Interests Will Be Protected

Restricting indirect foreign investment and maintaining ARINC's monopoly through the "one station licensee per location" rule is not justified on public safety or national security grounds. The Commission can implement the United States' WTO commitments to allow indirect foreign ownership, market access and national treatment while maintaining safety and security interests. Under the United States' WTO obligations, the Commission is entitled to use its licensing procedures to ensure that any potential service provider is sufficiently qualified to safely provide aeronautical enroute services as long as the Commission does so in a "reasonable, objective and impartial manner."<sup>4/</sup> SITA, for its part, is especially qualified to provide aeronautical enroute services. Its VHF AIRCOM service is licensed in 141 countries and territories and is used by most of the U.S. and international airlines in these regions. This illustrates that a great number of countries have been able to reconcile safety and national security interests with opening their markets to allow foreign participation in aeronautical enroute services.

Furthermore, Chairman Hundt noted that "national security is enhanced by [foreign] investment that builds redundant or more efficient or more robust communications networks."<sup>5/</sup> He went on to say that "[f]oreign ownership in any country's networks should be a concern only to the extent that the foreign investor has the ability to distort the

---

<sup>4/</sup> See General Agreement on Trade in Services, Apr. 15, 1994, 33 I.L.M. 1167, art. VI(1) (1994).

<sup>5/</sup> Chairman Reed Hundt, "Seven Habits of Hopefully Highly Successful Deregulatory Communications Policy People," Royal Institute of International Affairs, London, England (September 4, 1996) ("Chairman Hundt's Royal Institute of International Affairs Speech").

market."<sup>6/</sup> There is no such threat of distortion with regard to aeronautical enroute services. In fact, ARINC is the only entity in a position to exert market power. Opening of the aeronautical enroute services market pursuant to the Basic Telecommunications Agreement simply would serve to reduce market power by promoting competition, which brings better management, more efficient use of resources and the incentive for research and development, as well as infrastructure improvement and investment. In recent Congressional testimony, Chairman Hundt further asserted that the public interest would continue to be protected while allowing 100 percent indirect foreign ownership under the Basic Telecommunications Agreement because the Commission would continue to apply a public interest test in licensing and because service providers with indirect foreign ownership would still be subject to U.S. laws.<sup>7/</sup> He also has noted that "certainly foreign owned networks are just as subject as domestic owned networks to any nation's . . . police powers."<sup>8/</sup>

Lack of "historical guidance," as cited by ARINC, is not a justification for neglecting to fulfill the United States' promise to remove indirect foreign ownership restrictions on basic telecommunications services. No historical guidance exists for promoting competition and removing foreign investment barriers in most of the other WTO signatory countries, but they have committed to do so nonetheless. The United States, which expended enormous effort to convince those countries to join the Basic Telecommunications Agreement, likely

---

<sup>6/</sup> *Id.*

<sup>7/</sup> See *WTO Telecom Agreement: Results and Next Steps Before the Subcomm. on Telecommunications, Trade, and Consumer Protection of the House Comm. on Commerce*, 105th Cong., 1st Sess. (March 19, 1997) (oral testimony of Reed Hundt, Chairman, FCC).

<sup>8/</sup> Chairman Hundt's Royal Institute of International Affairs Speech.

would not accept lack of "historical guidance" as a justification for their avoidance of WTO obligations. Likewise, the United States should not follow such an approach.

## **II. Spectrum Coordination Issues May Not Be Used As A Basis To Unfairly Exclude Foreign Participation**

SITA also submits that spectrum frequency allocation should not be used as a justification for excluding foreign competition. Such an approach is inconsistent with the United States' WTO obligations. The Basic Telecommunications Agreement "Reference Paper," which the United States helped to persuade 55 other countries to adopt, states that "procedures for the allocation and use of scarce resources, including frequencies . . . will be carried out in an objective, timely, transparent and non-discriminatory manner."<sup>9/</sup> Also, during the WTO negotiations, the Chairman of the Group on Basic Telecommunications explained that each signatory may exercise "spectrum/frequency management . . . provided that this is done in accordance with Article VI and other provisions of the [General Agreement on Trade in Services],"<sup>10/</sup> which require "reasonable, objective and impartial" regulations that "do not constitute unnecessary barriers to trade in services."<sup>11/</sup> As SITA noted in its comments, sharing of spectrum and coordination of available frequencies among

---

<sup>9/</sup> Fourth Protocol to the General Agreement on Trade in Services ("WTO Basic Telecommunications Agreement"), Attachment to the United States Schedule, Reference Paper, Apr. 11, 1997, GATS/SC/90/Suppl.2.

<sup>10/</sup> World Trade Organization, Group on Basic Telecommunications, Chairman's Note, Feb. 3, 1997, S/GBT/4.

<sup>11/</sup> General Agreement on Trade in Services, arts. VI(1) and (4).

providers is a common practice in a range of services.<sup>12/</sup> The Commission recognized that coordination is possible in aeronautical enroute services when it commented that ARINC and others have "coordinated closely in the use of the enroute spectrum" in approving ARINC's request that, despite the "one station licensee per location" rule, it be permitted to provide service in Alaska along with another provider.<sup>13/</sup> SITA urges the Commission to take note of this WTO obligation and resist using frequency allocation as a means for excluding foreign participation in aeronautical enroute services.

### III. Use Of An *Ad Hoc* Licensing Approach Is Inconsistent With WTO Obligations

In its *Foreign Carrier Entry Order*, the Commission chose to use an *ad hoc* approach for aeronautical enroute services while voluntarily liberalizing restrictions on other services. As SITA discusses in its comments, continuing such an approach is not consistent with the United States' WTO commitments, which pledge to permit 100 percent indirect foreign ownership in all basic services, except for certain satellite services. The Office of the United States Trade Representative ("USTR"), which negotiated the Basic Telecommunications Agreement, has confirmed in its comments that under the Agreement, the United States "committed to provide most-favored nation, market access and national treatment to service

---

<sup>12/</sup> In fact, SITA only would require a single channel (from among over 120 channels assigned to aeronautical services) to provide its aeronautical enroute data service for the entire United States. See Comments of SITA in *Rules and Policies on Foreign Participation in the U.S. Telecommunications Market*, IB Docket No. 97-142, Order and Notice of Proposed Rulemaking (released June 4, 1997) at 19 ("*Foreign Participation NPRM*").

<sup>13/</sup> See *Amendment of Part 87 to Clarify the Aeronautical Enroute Station Rules and Provide Two Additional Frequencies for Use by Small Aircraft Operating Agencies*, Report and Order, 87 F.C.C.2d 382, para. 24 (1981). (ARINC requested that, despite the "one station licensee per location" rule, it be permitted to provide service for international routes while Alaska Aviation Radio, Inc. continued to provide domestic service.)

suppliers from WTO Members in the provision of *all* types of basic telecommunications" except direct-to-home, direct broadcast and digital audio radio satellite services.<sup>14/</sup>

Aeronautical enroute services, which provide basic data and voice transmission services, are basic services and thus are subject to the United States' WTO obligations. The USTR also notes, that under the Basic Telecommunications Agreement, the "decades-old tradition of telecommunications monopolies and closed markets will give way to market opening, deregulation and competition" and that the United States' "national interest is clearly advanced by the successful conclusion of the [WTO] negotiations."<sup>15/</sup> Furthermore, Chairman Hundt has pointed out that "[g]overnments around the world have realized that it is in their own self interest to open their markets to competition"<sup>16/</sup> and the Commission has asserted that effective competition in the U.S. market is its "primary goal."<sup>17/</sup>

In addition, government officials and numerous private parties, both domestic and foreign, have recognized the Agreement's market opening obligations for basic services and the benefits they bring, including stimulating new entry and competition.<sup>18/</sup> The United

---

<sup>14/</sup> See Comments of the Office of the United States Trade Representative in *Foreign Participation NPRM* at 2 (emphasis added).

<sup>15/</sup> *Id.* at 1-2.

<sup>16/</sup> *WTO Telecom Agreement: Results and Next Steps Before the Subcomm. on Telecommunications, Trade, and Consumer Protection of the House Comm. on Commerce*, 105th Cong., 1st Sess. (March 19, 1997) (written testimony of Reed Hundt, Chairman, FCC) at para. 25.

<sup>17/</sup> *Foreign Participation NPRM* at para. 25.

<sup>18/</sup> See, e.g., Comments of the Office of the United States Trade Representative; US WEST; Viatel; WinStar; Indus; NextWave; PanAmSat; Deutsche Telekom; France Telecom; FaciliCom International, L.L.C.; Wireless Cable Association International; Cable & Wireless; Telephone Data Systems, Inc.; Shell Offshore Services Company; Sprint; and GTE in *Foreign Participation NPRM*; see also *ex parte* letter of the European Union, April 24, (continued...)



States Telephone Association, for example, remarked that "[t]here can be no doubt that open entry as required under the Agreement will benefit the American consumer."<sup>19/</sup> The Commission itself stated that "[o]pen entry introduces new sources of competition, which will produce lower prices and greater service choice and innovation for American consumers."<sup>20/</sup> This widespread recognition of the WTO obligations and the benefits they bring is consistent with SITA's comments and the immediate relief it is seeking.

#### IV. Conclusion

This proceeding not only will fulfill the United States' WTO commitments, it also will set the tone for how other countries implement their own WTO obligations. Therefore, it is important for the FCC to ensure that its regulations and procedures effectively implement all of the United States' WTO obligations. For the above-stated reasons, and those contained in SITA's first round comments, the FCC should eliminate its restrictions on indirect foreign investment and clarify that it will treat aeronautical enroute licenses the same as other basic services by permitting 100 percent indirect foreign ownership as required by the Agreement. In addition, the FCC should conclude that its current rule limiting the grant of aeronautical enroute licenses to "one station licensee per location" is inconsistent with the United States' WTO obligations and Commission policies promoting competition and

---

<sup>18/</sup>(...continued)

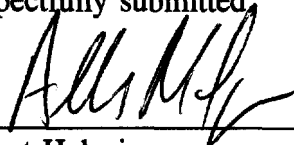
1997, in *International Settlement Rates*, IB Docket 96-261, Notice of Proposed Rulemaking, (released December 19, 1996).

<sup>19/</sup> Comments of the United States Telephone Association in *Foreign Participation NPRM* at 3.

<sup>20/</sup> *Foreign Participation NPRM* at para. 5.

therefore should be eliminated or modified to permit competition in aeronautical enroute services in the United States.

Respectfully submitted,



---

Albert Halprin  
Randall Cook  
Halprin, Temple, Goodman & Sugrue  
Suite 650 East Tower  
1100 New York Avenue, N.W.  
Washington, D.C. 20005  
(202) 371-9100

Counsel for Société Internationale de  
Télécommunications Aéronautiques

Dated: August 12, 1997

## **CERTIFICATE OF SERVICE**

I, Alva O. Roane, hereby certify that on the 12th day of August, 1997, a true copy of the foregoing SITA was delivered, either by hand or first-class mail, to the following:

The Hon. Reed E. Hundt  
Chairman  
Federal Communications Commission  
1919 M Street, N.W.  
Room 814  
Washington, D.C. 20554

Commissioner Rachelle B. Chong  
Federal Communications Commission  
1919 M Street, N.W.  
Room 844  
Washington, D.C. 20554

Commissioner James H. Quello  
Federal Communications Commission  
1919 M Street, N.W.  
Room 802  
Washington, D.C. 20554

Commissioner Susan Ness  
Federal Communications Commission  
1919 M Street, N.W.  
Room 832  
Washington, D.C. 20554

Peter Cowhey  
Chief - International Bureau  
Federal Communications Commission  
2000 M Street, N.W., Room 800  
Washington, D.C. 20554

John Giusti  
International Bureau  
Federal Communications Commission  
2000 M Street, N.W.  
Washington, D.C. 20554

Diane J. Cornell  
International Bureau  
Federal Communications Commission  
2000 M Street, N.W.  
Washington, D.C. 20554

Adam Krinsky  
International Bureau  
Federal Communications Commission  
2000 M Street, N.W., Room 800  
Washington, D.C. 20554

Kathy O'Brien  
International Bureau  
Federal Communications Commission  
2000 M Street, N.W.  
Washington, D.C. 20554

Susan O'Connell  
International Bureau  
Federal Communications Commission  
2000 M Street, N.W.  
Washington, D.C. 20554

Robert McDonald  
International Bureau  
Federal Communications Commission  
2000 M Street, N.W.  
Washington, D.C. 20554

John L. Bartlett  
Wiley, Rein & Fielding  
1776 K Street, N.W.  
Washington, DC 20006-2304  
Attorney for Aeronautical Radio, Inc.

Mark C. Rosenblum  
Lawrence J. Lafaro  
James J.R. Talbot  
AT&T  
Room 3252H3  
295 Maple Avenue  
Basking Ridge, NJ 07920

Michael K. Kellogg  
Austin C. Schlick  
Kellogg, Huber, Hansen, Todd & Evans  
1301 K Street, N.W.  
Suite 1000 West  
Washington, DC 20005  
Attorneys for BellSouth Corporation

Philip V. Permut  
Joan M. Griffin  
Kelley Drye & Warren LLP  
1200 19th Street, N.W., Suite 500  
Washington, DC 20036  
Attorneys for Cable & Wireless, PLC

Junichiro Miyazaki  
Counselor of Embassy of Japan  
Embassy of Japan  
2520 Massachusetts Avenue, N.W.  
Washington, DC 20008

John F. Lewis, Jr.  
National Security Division  
US Department of Justice  
Federal Bureau of Investigation  
Room 4129  
Washington, DC 20530

Theodore W. Krauss  
Danielle K. Aguto  
France Telecom North America  
555 13th Street, N.W.  
Suite 1100 East  
Washington, DC 20004

Frank Michael Panek  
Ameritech  
Room 4H84  
200 West Ameritech Center Drive  
Hoffman Estates, IL 60196-1025

Hogan & Hartson  
555 13th Street, NW  
Washington, DC 20006  
Attorneys for BT North America

Robert J. Aamoth  
Joan M. Griffin  
Kelley Drye & Warren LLP  
1200 19th Street, N.W., Suite 500  
Washington, DC 20036  
Attorneys for Deutsche Telekom AG and  
Deutsche Telekom, Inc.

Margaret M. Charles  
Maria L. Cattafesta  
Swidler & Berlin, Chartered  
3000 K Street, N.W., Suite 300  
Washington, DC 20007  
Attorneys for FaciliCom  
International, LLC

Wei Fong  
20 Floor, 169, Jen ai Road  
Sec. 4  
Taipei, 106  
Taiwan

Michael J. Shortley, III  
Frontier Corporation  
180 South Clinton Avenue  
Rochester, NY 14646

R. Michael Senkowski  
John B. Reynolds, III  
Todd D. Daubert  
Wiley, Rein & Fielding  
1776 K Street, N.W.  
Washington, DC 20006  
Attorneys for GTE Service Corporation

Robert J. Aamoth  
Joan M. Griffin  
Kelley Drye & Warren LLP  
1200 19th Street, N.W., Suite 500  
Washington, DC 20036  
Attorneys for Kokusai Denshin  
Denwa Co. LTD.

Janice Obuchowski  
Michael Wack  
NextWave Telecom Inc.  
1101 Pennsylvania Avenue, N.W.  
Suite 805  
Washington, DC 20005

Christopher M. Bennett  
NYNEX Long Distance Company  
1095 Avenue of the Americas  
Room 3828  
New York, NY 10036

Henry Goldberg  
Joseph A. Godles  
Mary Dent  
Goldberg, Godles, Wiener & Wright  
1229 19th Street, N.W.  
Washington, DC 20036  
Attorneys for Panamsat Corporation

Rebecca S. Weeks  
Carl Wayne Smith  
Department of Defense  
Defense Information Systems Agency  
701 S. Courthouse Road  
Arlington, VA 22204

Philip L. Verveer  
Jennifer A. Donaldson  
Gunnar D. Halley  
Willkie Farr & Gallagher  
Three Lafayette Center  
1155 21st Street, N.W.  
Washington, DC 20036  
Attorneys for Indus, Inc.

Sanford C. Reback  
Carol R. Schultz  
Larry Blosser  
MCI Telecommunications Corporation  
1801 Pennsylvania Avenue, N.W.  
Washington, DC 20006

Masanobu Suzuki  
Nippon Telegraph and Telephone  
Corporation  
Global Business Headquarters  
20-2 Nishi-Shinjuku 3-chome Shinjuku-ku  
Tokyo 163-14 Japan

Jeffrey M. Lang  
Office of the United States  
Trade Representative  
600 17th Street, N.W.  
Washington, DC 20006

James D. Ellis  
Robert M. Lynch  
Timothy P. Leahy  
SBC Communication Inc.  
175 E. Houston, Room 1254  
San Antonio, TX 78205

Stanley J. Moore  
5850 W. Las Positas Blvd.  
Pleasanton, CA 94588  
Attorney for SBC Communications Inc.

Wayne V. Black  
C. Douglas Jarrett  
Brian Turn Ashby  
Keller and Heckman LLP  
1001 G Street, N.W, Suite 500 West  
Washington, DC 20001  
Attorneys for Shell Offshore  
Services Company

J. Jeffrey Craven  
Jeffrey L. Ross  
Patton Boggs, LLP  
2550 M Street, N.W.  
Washington, DC 20037  
Attorneys for Telecom Finland, LTD

Alfred M. Mamlet  
Maury D. Shenk  
Colleen A. Sechrest  
Steptoe & Johnson, LLP  
1330 Connecticut Avenue, N.W.  
Washington, DC 20036  
Attorneys for Telefonica  
International De Espana, S.A.

George Y. Wheeler  
Koteen & Naftalin, LLP  
1150 Connecticut Avenue, N.W.  
Suite 1000  
Washington, DC 20036  
Attorney for Telephone and Data  
Systems, Inc.

Mary McDermott  
Linda Kent  
Keith Townsend  
Hance Haney  
United States Telephone Association  
1401 H Street, N.W., Suite 600  
Washington, DC 20005

Leon M. Kestenbaum  
Kent Y. Nakamura  
Sprint  
1850 M Street, N.W., 11th Floor  
Washington, DC 20036

NG Cher Keng  
Telecommunications Authority of  
Singapore  
36 Robinson Road  
TAS Building  
Singapore 0106

Gary M. Epstein  
Teresa D. Baer  
Latham & Watkins  
1001 Pennsylvania Avenue, N.W.  
Washington, DC 20004  
Attorneys for Telefonos De  
Mexico, S.A. DC C.V.

George C. Staple  
R. Edward Price  
Koteen & Naftalin, LLP  
1150 Connecticut Avenue, N.W.  
Suite 1000  
Washington, DC 20036  
Attorneys for Telstra, Inc.

Daniel L. Poole  
U S West Communications, Inc.  
1801 California Street  
Suite 5100  
Denver, CO 80202

Aileen A. Pisciotta  
Joan M. Griffin  
Kelley Drye & Warren, LLP  
1200 19th Street, N.W., Suite 500  
Washington, DC 20036  
Attorneys for Viatel, Inc.

Paul J. Sinderbrand  
William W. Huber  
Wilkinson, Barker, Knauer & Quinn  
1735 New York Avenue, N.W.  
Washington, DC 20006  
Attorneys for the Wireless Cable  
Association International, Inc.

Timothy R. Graham, Leo I. George  
Joseph M. Sandri, Jr., & Barry J. Ohlson  
Winstar Communications, Inc.  
1146 19th Street, N.W.  
Suite 200  
Washington, DC 20036

Robert S. Koppel  
WorldCom, Inc.  
15245 Shady Grove Road  
Suite 406  
Rockville, MD 20850-3222

  
Alva O. Roane